TAY CHOON ENG (f) v. THE CITY COUNCIL

[O. C. J. (Murray-Aynsley C.J.) June 23, 1955]

[Singapore — Suit No. 194 of 1955]

Municipal Ordinance (Cap. 133), ss. 144B and 367 — Mandatory order obtained for demolition of building — Notice to "occupier" — Whether proviso to s. 367 complied with.

The plaintiff in this case occupied a building as tenant of one Madam Jeenabai. The building in question was affected by s. 144B of the Municipal Ordinance and proceedings having been taken against Madam Jeenabai, it was demolished by the officers of the defendant Council. The defendants pasted a notice of their intention on the premises more than 6 hours before the demolition, but this notice was addressed to Madam Jeenabai.

The evidence showed that the actual owner of the building for the purposes of the Municipal Ordinance was the husband of Madam Jeenabai.

Held: (1) by the terms of s. 144B, proceedings must be taken against the "owner"; (2) in this case the notice addressed to Madam Jeenabai could not be considered as a notice to the occupier, and therefore the provisions of the proviso to s. 367 were not complied with.

ACTION FOR TORT.

L. A. J. Smith for the plaintiff.

J. E. Lloyd for the defendants.

Cur. Adv. Vult.

Murray-Aynsley C.J. : — In this case a building occupied by the plaintiff as tenant of a certain lady described in the proceedings as Madam Jeenabai (spelt in various ways) was demolished by officers of the defendant Council.

This is a tort unless the Council can justify their action. It appears that the defendants had obtained a mandatory order for the demolition of the building in the following circumstances. The building seems to have been one affected by section 144B and proceedings were taken against Madam Jeenabai. This appears to have been incorrect because the evidence shows that the owner for the purposes of the Municipal Ordinance is the husband of the lady, a Mr. H. A. Jivabhai. By the terms of section 144B proceedings must be taken against the "owner".

Further the provisions of the proviso to section 367 were not complied with. It appears that the building was a dwelling house in actual occupation. The defendants pasted a notice of their intention on the premises more than six hours before the demolition, but this notice was addressed to Madam Jeenabai. I do not see how a notice addressed only to Madam Jeenabai can be considered a notice to the occupier. In the circumstances a tort has been committed by the defendants. I do not think this is a case for heavy damages. I award $100 general damages. There can be an enquiry by the Registrar as to special damages. The plaintiff is entitled to the costs of the action.

Claim allowed.

Solicitors : *Donaldson & Burkinshaw; Drew & Napier.*

YII KIM HAI & ORS. v. REGINA

[C. A. (Williams C.J., Rogers and Blagden JJ.) June 15, 1955]

[Kuching — Criminal Appeal No. 2 of 1955]

Sarawak — Criminal Procedure Code (Cap. 62), ss. 115, 116 and 117 — Statements made to Police Officers — Admissibility — Proof that the statement is free and voluntary — Application of proviso to s. 4(1) of Criminal Appeal Act, 1907 — Sarawak, North Borneo and Brunei (Courts) Order in Council, 1951.

This matter was brought to the Court of Appeal of Sarawak, North Borneo and Brunei by virtue of a certificate of Bodley J. under s. 291A of the Criminal Procedure Code. The question for determination of the Court of Appeal was whether statements made by the appellants to Police Officeras under s. 117(5) of the Criminal Procedure Code had been correctly admitted by the District Court at Sarikei.

Ss. 115, 116 and 117 of the Sarawak Criminal Procedure Code read as follows: "115. — (1) A police officer making an investigation under this Chapter may by order in writing require the attendance before himself of any person being within the limits of the police district in which he is making an investigation who from the information given or otherwise appears to be acquainted with the circumstances of the case, and such person shall attend as so required. (2) If any such person refuses to attend as so required such police officer may report such refusal to a Magistrate who may thereupon in his discretion issue a summons or warrant to secure the attendance of such person as required by such order aforesaid.

"116. — (1) A police officer making a police investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined. (2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer but may refuse to answer any questions the answer to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

"117. — (1) No statement made by any person to a police officer in the course of a police investigation made under this Chapter shall be signed by the person making it, nor shall such statement, save as herein provided, be used as evidence. . . . . (5) The provisions of subsection (1) shall not apply to any statement made to any police officer who at the time when such statement is made is authorised by virtue of any special or general direction of the Governor to receive and record statements in the course of a police investigation and any such statement shall be admissible in evidence in like manner and circumstances and to the like extent as if the law in relation thereto were the law from time to time in force in England. (6) A statement shall be deemed to be made to a police officer within the meaning of subsection (5) notwithstanding that such officer is unable accurately to record the same in the language in which it was made and that with the assistance of an interpreter the same was recorded by such officer in a language different from that in which it was made. . . . . "